Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Cross-Ownership of Broadcast Stations and Newspapers	))	MM Docket No. 01-235
	)	
Newspaper/Radio Cross-Ownership Waiver Policy	))	MM Docket No. 96-197

COMMENTS OF
THE ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.

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COMMENTS OF THE ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.

The Association of Local Television Stations, Inc. ("ALTV"), hereby submits its comments in the above-captioned proceeding. ALTV is a non-profit, incorporated association of local television stations that are not affiliated with the ABC, CBS, or NBC television networks. ALTV has participated in various Commission proceedings regarding the television ownership rules. ALTV submits that the Commission's rule barring common ownership of a broadcast station and daily newspaper in the same market should be repealed, or at minimum, substantially revised to reflect the realities of today's competitive media marketplace.

1. THE HISTORICAL BASIS OF THE CROSS-OWNERSHIP BAN IS NO LONGER VALID IN TODAY'S COMMUNICATION LANDSCAPE

As the Commission has recognized in its *Order and Notice of Proposed Rule Making* there have been significant changes in the communications industry landscape since the newspaper/broadcast cross-ownership rule was adopted in 1975. The growth in traditional media outlets combined with the new programming networks and distribution platforms has called into question the "twin" rationale the Commission used when adopting the cross-ownership policy.[1] In adopting the cross-ownership rule, the Commission based its decision on its concerns with promoting "economic competition" and "diversity of viewpoints" in the local market.[2] Neither rationale for the cross-ownership ban continues to be valid. While local markets have undergone substantial changes since the rule's adoption, the FCC has failed to recognize that these changes mandate not only a reevaluation of the rule, but elimination of the cross-ownership prohibition. ALTV submits that the FCC is under an obligation to eliminate or modify its rules where the problems the rules seek to address no longer exist.[3]

II. THE LOCAL MARKET HAS BECOME HIGHLY COMPETITIVE OBVIATING THE NEED FOR THE CROSS-OWNERSHIP BAN.

A. Growth In Local Markets

[1] *Second Report and Order (Amendment of Sections 73.34, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard FM and Television Broadcast Stations)*, 50 FCC 2d 1046 (1975).

[2] *Id.*

[3] *See Home Box Office, Inc. v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977).

The local communications market which existed for the broadcast and newspaper industry when the Commission adopted its rule in 1975 is totally different than the one in which we live in 2001. Neither a broadcast television station nor a daily local newspaper continues to be the dominant giant in the media landscape that it perhaps was in 1975. Rather, each is a player in a competitive local market that includes numerous other media outlets competing for viewers' attention and advertisers' spending dollars. An individual television station faces competitive challenges in its market from numerous other broadcast television stations, radio stations, cable television systems with 54 or more video channels (many systems also have numerous audio channels of digital music), multichannel programming distributors (MVPDs), local daily, regional and national newspapers, Internet providers who can stream video and audio, and the growth of VCRs and DVDs for the home.[4] The Commission's *Order and Notice of Proposed Rule Making* has documented this tremendous growth in the market over the past twenty five plus years. Such growth has clearly removed one of the justifications for adoption of the ownership restriction.

The local market is much more competitive. Long gone are the days where the public waits for the eleven o'clock news or the morning paper to find out about news events or other public interest matters. Consumers want information now and can get it from a variety of sources. Besides the competition between and amongst broadcast stations and newspapers, new local cable news channels exist in numerous markets. In addition, Internet providers tailor

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[4] *See Order and Notice of Proposed Rule Making* in MM Docket No. 01-235, FCC 01-262 (Released September 20, 2001) at paras 9-12.

information for the individual subscriber such that the public can get instantaneous information on local events. By going on-line, consumers also can access newspapers from across the country or watch the newscasts of an out of state station. Consumers have a plethora of choices to learn about national, regional and local events.

B. All Competitive Media in Local Markets Should Be Counted for Diversity Purposes

The local media market is perhaps more competitive than it has ever been and clearly more competitive than it was when the cross-ownership rule was adopted in 1975. The Commission, however, fails to count for competition and diversity purposes all competitive or substitutable media interests in the local market. Although the Commission traditionally has refused to recognize these other media sources for purposes of its ownership rules, ALTV believes these other sources must be counted as being a part of the relevant "product" market. Television station owners and managers view these alternative media as competition since their very survival is based on meeting these competitive challenges for viewers on a daily basis. Radio, cable television, MVPDs and other non-traditional media sources should be counted.

III. CONGRESS AND THE COMMISSION HAVE FOUND CONSOLIDATION IN THE COMMUNICATIONS INDUSTRY TO BE IN THE PUBLIC INTEREST

Unlike broadcast television and newspapers, other media interests can and have been combined over the years. Consolidation is the reality of the majority of the communications industry. Congress and the FCC have recognized the need to permit mergers and acquisitions. Today's mergers and acquisitions which have occurred in the communications industry would have been thought impossible by communications experts in 1975.[5] Two television stations can

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[5] *See First Report and Order (Amendment of section 73.3555 of the Commission's Rules,*

now be owned by the same entity in the local market. The radio industry has undergone substantial consolidation with some companies owning hundreds of stations. Cable system owners have merged or acquired each other such that there are fewer owners. The DBS industry may soon be down to one entity. In every industry throughout the nation, consolidation has been the norm over the past few years. Companies recognize that their survival may depend on strategic mergers and acquisitions and the government has permitted such actions. Newspapers can operate local cable news channels and even could acquire local cable television systems. Broadcast television and newspapers have been the exception to the rule of consolidation. These owners have not been able to take advantage of the benefits of consolidation. Although neither is a "bottleneck" for local competition or controls the local market for ideas, the FCC has, in the past, viewed their combination as being contrary to the public interest. Other governmentally sanctioned combinations potentially have the ability to cause far greater harm to competition and diversity than broadcast/newspaper combinations. Despite the realities of the local competitive market, the FCC still holds broadcasters and newspaper owners to a different standard. Clearly, there no longer exists any justification to retain this outdated prohibition.

IV. BROADCAST/NEWSPAPER CROSS-OWNERSHIP COULD PROVIDE POSITIVE PUBLIC INTEREST BENEFITS

ALTV submits that the combination of a broadcast television station and a newspaper

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the Broadcast Multiple Ownership Rules), 4 FCC Rcd 1723 (1988) ("*First Radio Duopoly Order); Second Report and Order (Amendment of Section 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules)*, 4 FCC Rcd 1741 (1989) ("*One-to-a-Market Order*"); *Telecommunications Act of 1996*, Pub.L. No. 104-104 Section 202 (1996).

could provide positive benefits for the people in their respective local community. A broadcast television/newspaper combination would be able to cover local and regional news in a more efficient manner. Such combinations could use the synergies as providers of news, information and entertainment to the benefit of the local community. The economies of scale would benefit the public through timely, creative, detailed, diverse and more in-depth coverage of local events. Moreover, such combinations could be in a better position to compete with local cable, MVPDS and other media. These other media may have a size and resources advantage at their disposal that neither a television station nor a newspaper would have available. Morever, since neither broadcast television nor a daily newspaper is the only significant source of news, information and entertainment in the local market, the community can enjoy the benefits of the combination without the worry of undue market power.

The FCC's further assumption that common ownership of television and newspapers in the local market would tend to decrease diversity of viewpoints has been based entirely on a "51 is better than 50" mind set without consideration of reality and countervailing public interest benefits from combinations. In approving the rule, the Court relied upon the FCC's predictive judgment of the detriments of common ownership. Time and experience have shown that the "predictive" judgment of the Commission in 1975 is no longer accurate in today's marketplace. ALTV believes that the record in this proceeding will demonstrate that more owners in the local markets do not necessarily correlate to a better situation for local consumers or even advertisers.

An examination of the existing broadcast/newspaper combinations provides evidence that such joint operations can provide benefits without diminution in the level of competition in the local market. Such combinations are not run as a single-minded entity. In the typical situation, the broadcast and newspaper businesses are each operated as separate stand-alone business units with decisions regarding programming and editorial policy, including news and public affairs programming, left to the discretion of the individual business unit managers. Each business unit manager understands the need to be competitive in the market, even internally, against his or her counterpart at the other business unit. Interestingly, the FCC, over the years, has not found abuses at these grand fathered operations or the ones which have been granted waivers of the cross-ownership restriction. If the Commission had opined that these broadcast stations combined with newspapers failed to serve the public interest, the FCC could easily have denied their broadcast renewal applications.   The FCC has renewed these stations and implicitly recognized the public interest benefits from their common ownership with a newspaper. In light of the proven benefits of common ownership and the lack of competitive abuses, the Commission's "predictive" judgements should be outweighed by the realities of today's marketplace.

22. CONCLUSION

For the foregoing reasons, ALTV urges the Commission to repeal its ban against the common ownership of television and daily newspapers in the same market. ALTV believes that today's diverse and competitive communication's marketplace has rendered unnecessary the restriction on common ownership of a television station and daily newspaper in the same market.

Respectfully submitted:

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